

405 KAR 16:020. Contemporaneous reclamation.

RELATES TO: KRS 350.062, 350.093, 350.100, 350.405, 350.410, 350.435, 350.450, 350.465, 30 C.F.R. 730-733, 735, 816.100, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.028, 350.093, 350.100, 350.465, 30 C.F.R. Parts 730-733, 735, 816.100, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations establishing performance standards for protection of people and property, land, water, and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation establishes requirements for keeping reclamation operations, including backfilling, grading, soil preparation, and revegetation, contemporaneous with mining operations.

Section 1. Definition. "Completed reclamation" means completion of reclamation phase I as established in 405 KAR 10:040, Section 2(4)(a).

Section 2. General. Reclamation operations, including, backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching, and revegetation of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations and in accordance with this administrative regulation.

Section 3. Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time and distance criteria established in the approved plan for backfilling and grading shall take precedence over corresponding criteria in this administrative regulation.

(1) The approved backfilling and grading plan may specify time and distance criteria less restrictive than those established in this administrative regulation, and may allow more than one (1) pit per permit area, if the permittee has demonstrated through detailed written analysis in the permit application that other criteria or additional pits are essential to the proposed mining and reclamation operations, and if the requested criteria or additional pits will not likely cause adverse environmental impacts.

(2) If alternative distance limits are approved or additional pits allowed, then the applicant shall provide supplemental assurance in accordance with 405 KAR 10:015, Section 11.

(3)(a) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(b) There shall be only one (1) pit allowed per permit area.

(4) Auger mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial excavation for the purpose of removal of topsoil or overburden at that location.

(a) Auger holes shall be sealed as required by 405 KAR 20:030.

(b) Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) days and by not more than 1,500 linear feet.

(c) There shall be only one (1) auger mining operation allowed per permit area.

(5) Contour mining.

(a) Coal removal in a given location shall be completed within sixty (60) calendar days after

the initial excavation for the purpose of removal of topsoil or overburden at that location.

(b) Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1,500 linear feet.

(c) There shall be only one (1) pit allowed per permit area.

(6) Multiple-seam contour mining.

(a) If overlapping multiple cuts producing a benched highwall are made to remove more than one (1) coal seam at a given location, backfilling, and grading at that location shall be completed within sixty (60) calendar days after removal of the last coal seam at that location and shall follow the advancing cut of the last coal seam by not more than 1,500 feet.

(b) Removal of all coal seams shall proceed as concurrently as possible and in a timely manner, in order to minimize the time period in which disturbed areas are exposed prior to reclamation.

(c) There shall be only one (1) multiple seam operation allowed per permit area.

(7) Combined contour mining and auger mining.

(a) Coal removal by contour mining at a given location shall be completed within the time frame established in subsection (5) or (6) of this section as appropriate.

(b) Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location.

(c)1. Sealing of auger holes and backfilling and grading shall then be completed as required in subsection (4) of this section.

2. There shall be only one (1) contour mining pit and one (1) auger mining operation allowed per permit area.

(8) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area. If the mountaintop removal operation begins by mining a contour cut around all or a part of the mountaintop, the time and distance limits for contour mining shall apply to that cut unless alternative limits are approved pursuant to Section 3 of this administrative regulation and 405 KAR 10:015, Section 11.

(9) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 4. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation and in accordance with 405 KAR 16:200, Section 3.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) of this section may exceed thirty (30) calendar days only if specifically authorized in the approved plans for topsoil handling and revegetation or if authorized pursuant to Section 5 or 6 of this administrative regulation.

Section 5. Deferments. (1) The cabinet may allow a permittee to defer the time criteria for coal removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that the deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, or other conditions clearly beyond the permittee's control;

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050, Section 7, and 405 KAR 20:020; or

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section shall be made through submittal of the Coal Marketing Deferment, MPA-10, which is incorporated by reference in 405 KAR 8:010, Section 26. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that environmental damage shall not occur during the period of deferment.

(a) Application for a deferment pursuant to subsection (1)(a) of this section for adverse conditions shall be made in writing and shall include documentation of the adverse conditions beyond the operator's control and demonstration of impossibility of conducting coal removal and contemporaneous reclamation in a timely manner due to those conditions.

1. The application shall be filed at the appropriate regional office of the department.

2. Upon a successful demonstration that the adverse conditions exist, the regional administrator may grant a reclamation deferment for a maximum of thirty (30) days.

3. At least seven (7) days prior to the expiration of the deferment, the permittee may request, in writing, an additional extension, again stating the reason for the request and providing appropriate additional documentation.

4. The regional administrator may renew the original extension once upon request, but the renewal shall not exceed thirty (30) days.

5. The need for additional time shall be demonstrated to the Division of Mine Reclamation and Enforcement in Frankfort by written request.

6. The request shall initially be submitted to the regional office at least two (2) weeks prior to the expiration of the renewed deferment.

7. Upon recommendation of the regional administrator, the director of the Division of Mine Reclamation and Enforcement shall issue his decision on or before expiration of the deferment.

(b) Application for a deferment pursuant to subsection (1)(b) of this section for combined surface and underground mining shall be made according to 405 KAR 8:050, Section 7.

(c) Application for a deferment pursuant to subsection 1(c) of this section for coal marketing problems shall be made according to Section 6 of this administrative regulation.

(3) The applicant has the burden of establishing the need for a deferment.

(a) The applicant shall demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation shall be met during the period of deferment.

(b) The permittee shall continue to comply with the time limits of the coal removal and contemporaneous reclamation requirements until the deferment is issued.

(4)(a) Reclamation deferments shall be approved for a period reasonably related to the specified conditions justifying the deferment.

(b) The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except if approved combined mining is being carried out under subsection (1)(b) of this section.

(5) The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

Section 6. Additional Requirements for Deferments for Coal Marketing Problems. Upon written application conforming to the requirements of KRS Chapter 350 and 405 KAR 7 through 24, the cabinet may grant a deferment of coal removal and contemporaneous reclamation for a period not to exceed thirty (30) months pursuant to KRS 350.093.

(1) Application requirements.

(a) An application shall contain at least the following:

1. A demonstration of the need for the deferment, including documentation of the coal marketing problem;
2. A plan consisting of a detailed narrative description of the method by which the applicant shall conform to each of the performance standards established in subsection (2) of this section;
3. A detailed schedule for implementation of each of the performance standards of subsection (2) of this section, which may not extend beyond thirty (30) days from the issuance by the cabinet of a deferment from coal removal and contemporaneous reclamation;
4. An itemized estimate of the total cost of reclamation of the area proposed for deferment. The estimate shall, at a minimum, include calculations and supporting data demonstrating the volume of spoil necessary for backfilling and grading all open pits and highwalls, the cost of backfilling those pits and highwalls, the cost of final grading and revegetation of the entire disturbed area, and the cost of moving necessary reclamation equipment to the job site; and
5. Written consent of the surety for the deferment if the permit area or increment is covered by a surety bond.

(b) The applicant shall place an advertisement in the newspaper of largest bona fide circulation in each county in which the permit is located.

1. The advertisement shall be published within ten (10) days after the date the application is submitted to the cabinet and shall contain, at a minimum, the location of the area for which coal removal and contemporaneous reclamation are proposed to be deferred, the reason for which the deferment is sought, and the duration of the requested deferment.

2. The advertisement shall also indicate that the deferment shall not exceed six (6) months initially, but may be renewed for additional six (6) months periods up to a maximum of thirty (30) months.

3. The applicant shall submit proof of the advertisement to the cabinet within fifteen (15) days after application for the deferment.

4. The application shall not be deemed complete until the proof is submitted.

(c) The applicant shall also notify, in writing, the owners of the surface of the permit area and adjacent areas as listed on the permit application.

1. The applicant shall provide proof of this notice to the cabinet.

2. The application shall not be deemed complete until the proof is submitted. Within five (5) days after receipt of a complete application, the cabinet shall notify those other persons, if any, who have an interest that is or may be adversely affected by the proposed deferment.

(d) A person with an interest that is or may be adversely affected may file written comments and objections to the application for a deferment. The comments or objections shall be filed within ten (10) days after receipt of the written notice or publication of the newspaper notice, whichever is later.

(e) Upon receipt of the application, the cabinet shall examine the data and calculations submitted pursuant to subsection (1)(a)4 of this section and shall cause an inspection of the area subject to the proposed deferment to be made by an authorized agent of the cabinet.

1. Based upon the data supplied and the inspection, the Division of Permits of the cabinet shall determine if the existing bond for the entire permit or increment is sufficient for the cabinet to completely reclaim the entire disturbed area of the permit or increment at the expiration of the deferment.

2. If the existing bond is insufficient, then the cabinet shall require, prior to approving the deferment, that the applicant file additional bond sufficient for the cabinet to completely reclaim the disturbed area.

(f) The cabinet shall consider the application, other submittals from the applicant, and com-

ments received from the public, and shall render a final decision on the application within thirty (30) days of receipt of the complete application.

1. If the applicant has satisfied the requirements for a deferment from coal removal and contemporaneous reclamation established in KRS 350.093(2) and in this administrative regulation, then the cabinet shall grant a deferment to the applicant for a period not to exceed six (6) months.

2. Upon approval by the cabinet, the plan and schedule proposed by the applicant and conditions imposed on the approval by the cabinet shall become conditions of the permit.

(2) Performance standards. Each permittee subject to a deferment shall, at a minimum:

(a) Complete final reclamation including backfilling, grading, topsoiling, and revegetation on all disturbed areas; except that those areas of the pit, work area, excess spoil disposal areas, topsoil storage areas, and access road necessary to allow resumption of coal extraction without redisturbance of finally reclaimed areas may be exempted from this requirement for the duration of the deferment. In order to meet this requirement, the permittee may be required to reclaim closer to the pit than the distance limits specified in the contemporaneous reclamation administrative regulation;

(b) Mulch or establish quick growing temporary vegetation, or both, on all areas exempted pursuant to paragraph (a) of this subsection (except for haul road surfaces), such as excess spoil disposal areas, work areas, topsoil storage areas, and all other areas that have been cleared of vegetation, to the extent technically practicable to achieve erosion control or stability. The permittee shall maintain the cover on all these areas to minimize erosion throughout the deferment period;

(c) Acid- or toxic-producing spoil shall not be left exposed but shall be covered or treated in accordance with Section 3 of 405 KAR 16:190 and 405 KAR 18:190;

(d) Supplemental sediment control measures such as straw dikes and fabric filter fences shall be required if necessary to minimize additional contributions of sediment to the stream flow or run-off; and

(e) If accumulation of water in the pit may adversely impact the hydrologic balance, public health and safety or the environment, the cabinet shall require measures necessary to minimize adverse impacts. These may include:

1. Providing drainage from the pit to prevent breaching of the undisturbed berm; or
2. Pumping the water to a treatment facility if accumulation of acid or toxic water in the pit may result in contamination of the ground water.

(3) Deferment implementation.

(a) The permittee shall implement the terms of the approved plan within the time schedule approved by the cabinet and consistent with this administrative regulation.

(b) Except as expressly modified by the approved plan, schedule, and conditions in the deferment approval, the permittee shall comply with all of the requirements of 405 KAR Chapters 7 through 24 and the permit conditions that would apply to the operation had the deferment not been granted. These requirements include:

1. All discharges of water from the permitted area shall be continually treated to meet the applicable effluent limitations;

2. All water quality monitoring and reporting otherwise required shall continue;

3. All diversion ditches, sedimentation ponds, haul road drainage ditches and culverts, shall be rehabilitated as necessary and continually maintained to comply with the applicable performance standards and with the designs approved in the permit. Sediment shall be removed from the sedimentation ponds if the design sediment storage volume has filled with sediment; and

4. Haul road maintenance, such as grading, replacement of durable surface material, and

cleaning out of ditches and culverts, shall be continually performed as necessary to comply with the performance standards and the approved permit and to minimize erosion.

(4) Expiration and renewal.

(a) A deferment from coal removal and contemporaneous reclamation shall expire six (6) months after the date of issuance of the deferment by the cabinet.

1. A deferment from coal removal and contemporaneous reclamation may be renewed upon written application for a period of no more than six (6) months upon a showing of need for additional time, and upon a showing that the area subject to deferment is in compliance with the requirements of 405 KAR Chapters 7 through 24, the permit, and the terms of the deferment.

2. The cabinet shall inspect the area subject to deferment prior to approval of any renewal.

(b) Regardless of the reasons for the deferment, deferments or subsequent renewals shall not be granted beyond the maximum aggregate period of thirty (30) months for a permit area, including deferment periods issued for adverse conditions. At the expiration of the thirty (30) month aggregate period, a permittee shall not be granted additional deferments or renewals unless the permittee can demonstrate that it has conducted twelve (12) months of continuous active coal removal from the permit area after the expiration of the thirty (30) month aggregate period, it has completed reclamation of all previously deferred areas in the permit area, and it otherwise meets all requirements for a deferment.

(c) The deferment shall terminate upon resumption of coal extraction activities on the permit area subject to deferment.

(5) Enforcement and revocation.

(a) The cabinet shall inspect the area subject to deferment at least once each month on the average, during the routine partial and complete inspections made of the permit area. Upon each inspection, the inspector shall note under the "comments" section of the Mine Inspection Report form if the area subject to deferment meets the conditions of the deferment approval, including the plan and schedule.

(b) If the inspection shows that a violation of the conditions of the deferment or of 405 KAR Chapters 7 through 24 or of the conditions of the permit is occurring on the area subject to deferment, or is causally related to the area subject to deferment, then the cabinet shall issue a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance in accordance with 405 KAR Chapter 12. If the permittee fails to abate the violation within the time for abatement, or extension thereof, established by the cabinet, then the cabinet shall revoke the deferment in addition to other enforcement actions required by 405 KAR Chapters 7 through 24. (8 Ky.R. 1528; eff. 1-6-1983; 11 Ky.R. 237; 578; eff. 10-9-1984; 21 Ky.R. 530; eff. 12-12-1994; TAm eff. 8-9-2007; 38 Ky.R. 2007; 39 Ky.R. 473; eff. 9-6-2012; Crt eff. 7-3-2018.)